



MONTANA LEGISLATIVE BRANCH

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DATE: November 29, 2007

TO: Members of the Legislative Finance Committee

FROM: Barbara Smith, Fiscal Analyst II

RE: Department of Environmental Quality, Operating Budget Change

The Department of Environmental Quality (DEQ) Remediation Division requests to move \$500,000 from operating costs to capital outlay to purchase parcels of land to initiate two reclamation plans under the Abandoned Mine Lands (AML) program. The primary issue is that the proposed land transactions include one in which the purchase price is over twice the appraised value; and 2) this land transaction is not subject to review of the Board of Land Commissioners.

Background

As part of the AML program, an Engineering Evaluation/Cost Analysis (EEE/CA) is developed to determine what option should be used to reclaim affected land and if a full Environmental Impact Statement (EIS) is required. The Office of Surface Mining of the US Department of Interior makes the determination of what option is viable and whether the EIS is needed. In this case, both parcels were determined to not need an EIS and that land purchase by the state was a better option than waste removal and transportation to an out-of-state facility for appropriate disposal.

Proposed Land Deals

There are three proposed land transactions in two projects

Park County

To meet the conditions of the EEE/CA, the AML program plans to purchase 33.2 acres in Park County to address the McLaren mine tailing site. A permanent repository will be constructed on the acquired land to prevent any human health related consequences and further degradation of Soda Butte Creek. The purchase price for this site is \$60,000 based on a five year old appraisal, which is less than current market value. No issues are raised with this portion of the proposed change.

Cascade County

The second project is for approximately 94 acres of land in Cascade County southwest of Belt. This property has been negotiated for purchase to implement a plan to reduce acid mine drainage

(AMD) into Belt Creek. The reclamation will involve removing buried mine wastes from the flood plain to eliminate the AMD back flow into Belt Creek and reduce the groundwater recharge to the mine workings by changing the agricultural practices of the land from wheat production to alfalfa production. This proposed plan is split into two purchases.

One proposed transaction is for approximately 5.6 acres for \$41,500, the appraised value. The other 88.3 acres are in a second transaction for \$463,028 on an appraised value of \$199,850. This represents a transaction price of over twice the appraised value. State law provides for the purchase of such land at a reasonable price as per 82-4-371(3), MCA:

“(3) The board may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.”

As noted in this section, if a reasonable price can not be obtained, the land can be acquired through eminent domain, as per Title 70, chapter 30. Montana eminent domain laws allow for the state to acquire land for a number of qualifying reasons, including the ability to reclaim lands that were strip or underground mined for coal. As per Article II section 29 of the Montana Constitution:

“Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into a court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.”

In addition, the Title 30, Chapter 25, Sub Chapter IV of the Code of Federal Regulations addresses the acquisition and reclamation of land affected by past coal mining practices states:

“The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.”

Given the guidance provided in state and federal law, it appears that this transaction may be in violation of both state and federal law.

Why is the cost so high?

In conversations with DEQ staff, the price was inflated from the appraisal due to the location, as Belt land is beginning to be subdivided for small acreage lots. In conversations with the appraiser, however he stated that sub division activity was taken into consideration in appraising the property. In addition, given the past use of the land, this parcel would be subject to additional review in the subdivision platting process to determine what, if any, additional resources would be required to ensure appropriate water quality.

Issue

The operating plan is requesting a transfer of funds to purchase land at significantly more than fair market value. The transaction raises the issue of whether it is reasonable to pay twice the fair market value of the land for reclamation purposes, where such land likely could be obtained at a lower price.

It is unknown as to what process the DEQ used in negotiating the price for this land, or if alternatives to purchasing the entire land were considered. These options could have included:

1. Purchase, at a reasonable cost, only the land needed for the facilities and the repository and reimburse the farmer for the difference in harvest values between wheat and alfalfa production, if one is necessary; or
2. Purchase the 88 acres at a price aligned with fair market value.

If a reasonable price could not be established, the DEQ has the option, per state statute, to utilize the eminent domain process. Eminent domain in Montana provides the state the opportunity to acquire land for a public need and provide fair market value to the owner. In simple terms, the state would offer a reasonable sum based on fair market value and the court would determine if just compensation was provided to the owner. If so, the property would be condemned and the land owner compensated.

Options

The role of the LFC for an operating plan change is to provide comment to the executive regarding the transaction. The executive has the option of addressing the comment or proceeding with approval of the transaction. The committee may wish to:

- o Provide written comment to the executive urging that the purchase price of the 88 acres be renegotiated to reflect fair market value, or that other options be explored to ensure fair market price in adherence with statute, and report the outcomes of such negotiations to the LFD staff
- o Provide written comment to the executive expressing concern that land is being purchased at twice the fair market value and explore legislation to prevent this type of purchase from occurring in the future
- o Provide written comment to the executive urging him to initiate eminent domain procedures to procure the land at a fair price to the landowner if other options to reach fair market value are not successful.
- o Take no action